

# **EXHIBIT B**

Stephen A. Swedlow (admitted *pro hac vice*)  
stephenswedlow@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60606-1881  
(312) 705-7400

Kevin Y. Teruya (Bar No. 235916)  
kevinteruya@quinnemanuel.com  
Adam B. Wolfson (Bar No. 262125)  
adamwolfson@quinnemanuel.com  
Brantley I. Pepperman (Bar No. 322057)  
brantleypepperman@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017-2543  
(213) 443-3000

*Attorneys for Non-Parties Maximilian Klein and  
Sarah Grabert and the Putative Antitrust  
Consumer and Unjust Enrichment Consumer  
Classes*

Warren Postman (Bar No. 330869)  
wdp@kellerlenkner.com  
Jason Ethridge (*pro hac vice forthcoming*)  
jason.ethridge@kellerlenkner.com

**KELLER LENKNER LLC**  
1300 I Street, N.W., Suite 400E  
Washington, DC 20005  
(202) 918-1123

Ashley Keller (*pro hac vice forthcoming*)  
ack@kellerlenkner.com

Benjamin Whiting (*pro hac vice  
forthcoming*)  
ben.whiting@kellerlenkner.com

**KELLER LENKNER LLC**  
150 N. Riverside Plaza, Suite 4270  
Chicago, IL 60606  
(312) 741-5220

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

REVEAL CHAT HOLDCO, LLC, a Delaware  
limited liability company, USA  
TECHNOLOGY AND MANAGEMENT  
SERVICES, INC. (d/b/a Lenddo USA), a  
Delaware corporation, and BEEHIVE  
BIOMETRIC, INC., a dissolved Delaware  
corporation,

*Plaintiffs,*

vs.

FACEBOOK, INC., a Delaware corporation  
headquartered in California,

*Defendant.*

Case No. 5:20-cv-00363-BLF

**KLEIN PLAINTIFFS' OPPOSITION TO  
FACEBOOK'S SECOND MOTION FOR  
ADMINISTRATIVE RELIEF TO  
CONSIDER WHETHER CASES SHOULD  
BE RELATED**

Judge: The Honorable Beth Labson Freeman

Defendant Facebook, Inc.’s (“Facebook”) motion to relate *Klein v. Facebook, Inc.*, No. 5:20-cv-08570-LHK (“*Klein*”) and later-filed cases—*Sherman v. Facebook, Inc.*, No. 3:20-cv-08721-LB (“*Sherman*”); *Kupcho v. Facebook, Inc.*, No. 4:20-cv-08815-JSW (“*Kupcho*”); and *Dames v. Facebook, Inc.*, No. 3:20-cv-08817-TSH (“*Dames*”)—to *Reveal Chat Holdco, LLC v. Facebook, Inc.*, No. 5:20-cv-00363-BLF (“*Reveal Chat*”) continues to incorrectly presume that any and all antitrust cases against Facebook are necessarily related. The *Klein* plaintiffs, non-parties in the *Reveal Chat* case, submit this opposition to correct several factual and legal misstatements in Facebook’s newest motion, dkt. 87 (“Mot.”).<sup>1</sup>

**First**, Facebook cites Judge Gonzalez Rogers’ decision in *Pepper v. Apple, Inc.* for the proposition that “Rule 3-12(a)(1) allows for relation of actions even where plaintiff classes differ, including classes of consumers as opposed to content creators.” Mot. at 3 (citing *Pepper v. Apple Inc.*, 2019 WL 4783951, at \*1 (N.D. Cal. Aug. 22, 2019)).<sup>2</sup> But each of the three cases that were the subject of Judge Gonzalez Rogers’ decision—*Pepper*, *Cameron*, and *Sermons*—involved the same alleged product markets and essential theory of monopolization within those markets. See *Robert Pepper, et al., v. Apple Inc.*, No. 4:11-cv-06714-YGR, Dkt. 121 (*Pepper* Second Amended Complaint) at ¶ 49 (referring to a “iPhone apps distribution market”); *Cameron, et al., v. Apple, Inc.*, No. 4:19-cv-03074-YGR, Dkt. 1 (*Cameron* Complaint) at ¶ 100 (defining relevant product market as the “market for iOS app and in-app-product distribution services.”); *Sermons v. Apple Inc.*, No. 4:19-cv-03796-YGR, Dkt. 1 (*Sermons* Complaint) at ¶ 63 (defining relevant product market as the “market for iOS app and in-app-product distribution services[.]”). That is why,

---

<sup>1</sup> Facebook previously filed a motion to relate the *Klein* case to the *Reveal Chat* case on December 10, 2020, and the *Klein* plaintiffs filed an opposition to Facebook’s motion on December 14, 2020. Dkts. 85, 86. That motion is still pending before the Court.

<sup>2</sup> Facebook did not cite *Pepper* in its motion to relate *Klein* to *Reveal Chat*. But Facebook now raises *Pepper* for the first time in its present motion, which references *Klein* and argues that *Klein* and the later-filed *Sherman*, *Kupcho*, and *Dames* are all related to *Reveal Chat*.

1 notwithstanding differences in the classes (consumers versus developers), Judge Gonzalez Rogers  
 2 related *Cameron* and *Sermons* to *Pepper*. See *Pepper*, 2019 WL 4783591, at \*1 (relating cases  
 3 because they all involved “Apple’s alleged monopolization of the distribution and sale of iPhone  
 4 apps.”). In contrast to *Pepper*, which featured different classes and the same product market,  
 5 *Klein* and *Reveal Chat* not only feature different classes (consumers versus developers), but also  
 6 address different legal theories of anticompetitive conduct and harm in different product markets  
 7 (the Social Network and Social Media Markets, as compared to the wholly different Social Data  
 8 and Social Advertising product markets).

9       **Second**, Facebook’s motion incorrectly suggests that it is the *Klein* plaintiffs’ burden (and  
 10 the *Sherman*, *Kupcho*, and *Dames* plaintiffs’ burden) to “defeat relation.” Mot. at 4. But  
 11 Facebook has it backwards. See *ESS Tech., Inc. v. PC-Tel, Inc.*, No. 01-cv-1300-VRW, 2001 WL  
 12 1891713, at \*3 (N.D. Cal. Nov. 28, 2001) (indicating that “[a] party seeking to relate two or more  
 13 cases must show that [Rule 3-12]’s criteria are met[.]”). The reason for this is that random  
 14 assignment to different Judges “eliminate[s] any hint of the appearance of judge- or case-  
 15 shopping.” *UCP Int’l Co. Ltd. v. Balsam Brands Inc.*, 261 F. Supp. 3d 1056, 1060 (N.D. Cal.  
 16 2017). Thus, by placing the burden on the party seeking relation, the related case rule avoids  
 17 “[t]he potential for manipulation” that would arise if a single defendant “could relate any matter  
 18 arising from its” alleged wrongdoing “to a single judge on this Court, irrespective of the  
 19 particularities of each case.” *Comm. on Judiciary v. McGahn*, 391 F. Supp. 3d 116, 122 (D.D.C.  
 20 2019).<sup>3</sup> Presumably, that is why, notwithstanding the (minimal) risk of inconsistent rulings that is  
 21 always present any time multiple cases are filed against the same defendant, cases against  
 22 Facebook arising from its misuse of its users’ data have consistently been assigned to different  
 23 judges of the Northern District. See, e.g., *In re Facebook, Inc., Consumer Privacy User Profile*  
 24 *Litig.*, 18-md-02843-VC (Chhabria, J.); *Williams v. Facebook, Inc.*, 18-cv-01881-RS (Seeborg, J.);

---

26       <sup>3</sup> This potential is particularly acute once a judge has expressed his or her views on the  
 27 merits in one of the cases.  
 28

1 *In re Facebook Biometric Info. Privacy Litig.*, No. 15-cv-03747-JD (Donato, J.); *In re Facebook,*  
 2 *Inc. Internet Tracking Litig.*, No. 12-md-02314-EJD (Davila, J.).<sup>4</sup>

3 **Third**, Facebook erroneously states that *Klein* “follow[s] the highly-publicized antitrust  
 4 lawsuits filed by the FTC and the Attorneys General of 46 states, D.C., and Guam . . . against  
 5 Facebook.” Mot. at 1. A simple check of the dockets in each case makes clear that is incorrect.  
 6 Unique among the cases Facebook seeks to relate here, the *Klein* plaintiffs filed suit before the  
 7 FTC and States filed their own suits (December 3, 2020 versus December 9, 2020). *Compare*  
 8 *Klein*, Dkt. 1 (Dec. 3, 2020); *with State of New York et al. v. Facebook, Inc.*, No. 1:20-cv-03589-  
 9 JEB (D.D.C.), Dkt. 1 (Dec. 9, 2020); *Federal Trade Commission v. Facebook, Inc.*, No. 1:20-cv-  
 10 03590-CRC (D.D.C.), Dkt. 1 (Dec. 9, 2020).

11 Because *Klein* and *Reveal Chat* involve different plaintiffs, different classes, different  
 12 product markets, and different theories of liability, Facebook has not met its burden to show that  
 13 the two cases should be related, and Facebook’s motion should be denied.

---

14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23 <sup>4</sup> Moreover, the risk of duplicative or inconsistent discovery rulings is minimal and, in any  
 24 event, does not justify the relation of the cases. *See Univ. of California v. Eli Lilly & Co.*, No. 90-  
 25 cv-0373-DLJ-JSB, 1991 WL 332056, at \*10 (N.D. Cal. Nov. 4, 1991) (denying motion to relate  
 26 cases to same district judge and determining that any risk of inconsistent discovery rulings  
 27 between cases could be eliminated by assigning “management of all discovery disputes” in cases  
 28 to same magistrate judge).

Dated: December 21, 2020

Respectfully submitted,

Stephen A. Swedlow (admitted *pro hac vice*)  
stephenswedlow@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60606-1881  
(312) 705-7400

Kevin Y. Teruya (Bar No. 235916)  
kevinteruya@quinnemanuel.com  
Adam B. Wolfson (Bar No. 262125)  
adamwolfson@quinnemanuel.com  
Brantley I. Pepperman (Bar No. 322057)  
brantleypepperman@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017-2543  
(213) 443-3000

/s/ Adam B. Wolfson  
Warren Postman (Bar No. 330869)  
wdp@kellerlenkner.com  
Jason Ethridge (*pro hac vice forthcoming*)  
jason.ethridge@kellerlenkner.com  
**KELLER LENKNER LLC**  
1300 I Street, N.W., Suite 400E  
Washington, DC 20005  
(202) 918-1123  
  
Ashley Keller (*pro hac vice forthcoming*)  
ack@kellerlenkner.com  
Ben Whiting (*pro hac vice forthcoming*)  
ben.whiting@kellerlenkner.com  
**KELLER LENKNER LLC**  
150 N. Riverside Plaza, Suite 4270  
Chicago, IL 60606  
(312) 741-5220

*Attorneys for Non-Parties Maximilian  
Klein and Sarah Grabert and the Putative  
Antitrust Consumer and Unjust  
Enrichment Consumer Classes*

**ATTESTATION OF ADAM B. WOLFSON**

This document is being filed through the Electronic Case Filing (ECF) system by attorney Adam B. Wolfson. By his signature, Mr. Wolfson attests that he has obtained concurrence in the filing of this document from each of the attorneys identified on the caption page and in the above signature block.

Dated: December 21, 2020

By /s/ Adam B. Wolfson  
Adam B. Wolfson

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of December 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System, causing the document to be served on all attorneys of record in this case.

By /s/ Adam B. Wolfson  
Adam B. Wolfson

Stephen A. Swedlow (admitted *pro hac vice*)  
stephenswedlow@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60606-1881  
(312) 705-7400

Kevin Y. Teruya (Bar No. 235916)  
kevinteruya@quinnemanuel.com  
Adam B. Wolfson (Bar No. 262125)  
adamwolfson@quinnemanuel.com  
Brantley I. Pepperman (Bar No. 322057)  
brantleypepperman@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017-2543  
(213) 443-3000

*Attorneys for Non-Parties Maximilian Klein and  
Sarah Grabert and the Putative Antitrust  
Consumer and Unjust Enrichment Consumer  
Classes*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

REVEAL CHAT HOLDCO, LLC, a Delaware  
limited liability company, USA  
TECHNOLOGY AND MANAGEMENT  
SERVICES, INC. (d/b/a Lenddo USA), a  
Delaware corporation, and BEEHIVE  
BIOMETRIC, INC., a dissolved Delaware  
corporation,

*Plaintiffs,*

vs.

FACEBOOK, INC., a Delaware corporation  
headquartered in California,

*Defendant.*

Warren Postman (Bar No. 330869)  
wdp@kellerlenkner.com  
Jason Ethridge (*pro hac vice forthcoming*)  
jason.ethridge@kellerlenkner.com  
**KELLER LENKNER LLC**  
1300 I Street, N.W., Suite 400E  
Washington, DC 20005  
(202) 918-1123

Ashley Keller (*pro hac vice forthcoming*)  
ack@kellerlenkner.com  
Benjamin Whiting (*pro hac vice  
forthcoming*)  
ben.whiting@kellerlenkner.com  
**KELLER LENKNER LLC**  
150 N. Riverside Plaza, Suite 4270  
Chicago, IL 60606  
(312) 741-5220

Case No. 5:20-cv-00363-BLF

***KLEIN PLAINTIFFS' [PROPOSED]  
ORDER DENYING FACEBOOK'S  
SECOND MOTION FOR  
ADMINISTRATIVE RELIEF TO  
CONSIDER WHETHER CASES SHOULD  
BE RELATED***

**[PROPOSED] ORDER**

On December 16, 2020, Defendant Facebook, Inc. (“Facebook”) filed a motion for administrative relief to consider whether *Maximilian Klein, et al., v. Facebook, Inc.*, Case No. 5:20-cv-08570-LHK; *Sherman v. Facebook, Inc.*, No. 3:20-cv-08721-LB; *Kupcho v. Facebook, Inc.*, No. 4:20-cv-08815-JSW; and *Dames v. Facebook, Inc.*, No. 3:20-cv-08817-TSH should be related to *Reveal Chat Holdco LLC, et al., v. Facebook, Inc.*, 5:20-cv-00363-BLF. Dkt. 87. Non-parties Maximilian Klein and Sarah Grabert filed an opposition on December 21, 2020, requesting that the Court deny Facebook’s motion. Dkt. \_\_.

Having reviewed Facebook’s motion, the *Klein* plaintiffs’ opposition, the record, the arguments of counsel, and the relevant authorities, the Court concludes that the requirements of Civil L.R. 3-12 have not been met. For these reasons, Facebook’s motion is **DENIED**.

**IT IS SO ORDERED.**

Dated: December \_\_, 2020

---

Hon. Beth Labson Freeman  
United States District Judge

Dated: December 21, 2020

Respectfully submitted,

Stephen A. Swedlow (admitted *pro hac vice*)  
stephenswedlow@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60606-1881  
(312) 705-7400

Kevin Y. Teruya (Bar No. 235916)  
kevinteruya@quinnemanuel.com  
Adam B. Wolfson (Bar No. 262125)  
adamwolfson@quinnemanuel.com  
Brantley I. Pepperman (Bar No. 322057)  
brantleypepperman@quinnemanuel.com  
**QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017-2543  
(213) 443-3000

/s/ Adam B. Wolfson  
Warren Postman (Bar No. 330869)  
wdp@kellerlenkner.com  
Jason Ethridge (*pro hac vice forthcoming*)  
jason.ethridge@kellerlenkner.com  
**KELLER LENKNER LLC**  
1300 I Street, N.W., Suite 400E  
Washington, DC 20005  
(202) 918-1123

Ashley Keller (*pro hac vice forthcoming*)  
ack@kellerlenkner.com  
Ben Whiting (*pro hac vice forthcoming*)  
ben.whiting@kellerlenkner.com  
**KELLER LENKNER LLC**  
150 N. Riverside Plaza, Suite 4270  
Chicago, IL 60606  
(312) 741-5220

*Attorneys for Non-Parties Maximilian  
Klein and Sarah Grabert and the Putative  
Antitrust Consumer and Unjust  
Enrichment Consumer Classes*

**ATTESTATION OF ADAM B. WOLFSON**

This document is being filed through the Electronic Case Filing (ECF) system by attorney Adam B. Wolfson. By his signature, Mr. Wolfson attests that he has obtained concurrence in the filing of this document from each of the attorneys identified on the caption page and in the above signature block.

Dated: December 21, 2020

By /s/ Adam B. Wolfson  
Adam B. Wolfson